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12 Attorney for The Jones Vargas  
Direct Lenders

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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17 THE LENDERS PROTECTION GROUP;  
18 CHARLES B. ANDERSON TRUST; RITA  
P. ANDERSON TRUST; BLATES CO.;  
KEHL FAMILY MEMBERS; MOJAVE  
CANYON, INC.,

Case Nos.: 2:07-CV-00072-RLH-GWF

## **DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL**

Appellants,

V.

1 USA COMMERCIAL MORTGAGE CO.,  
22 et al.

### Appellees.

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The Lenders Protection Group, a group of approximately 400 investors/lenders in USA Commercial Mortgage Company (“USACM”), as identified on the *Statement Of The Law Offices Of Alan R. Smith Pursuant To Bankruptcy Rule 2019* filed herein on December 6, 2006, and as supplemented thereafter (“LPG”), through its counsel, Alan R. Smith, Esq., and Charles B. Anderson

1 Trust; Rita P. Anderson Trust; Baltes Company; Kehl Family Members and Mojave Canyon, Inc.,  
2 represented by Janet L. Chubb, Esq., of Jones Vargas (the “Jones Vargas Direct Lenders”) (the LPG  
3 and the Jones Vargas Direct Lenders shall collectively be referred to as “Appellants”), pursuant to  
4 Fed. R. Bankr. Proc., Rule 8006 and LR 8006, hereby designate the items listed in Exhibit A hereto  
5 to be included in the record on appeal and submit their statement of issues presented on appeal  
6 attached hereto as Exhibit B.

7 DATED this 26<sup>th</sup> day of January, 2007.

8 LAW OFFICES OF ALAN R. SMITH

9 */s/ Alan R. Smith*

10 By \_\_\_\_\_  
11 ALAN R. SMITH, ESQ.  
12 Attorney for Appellants

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**EXHIBIT A****Designation Of Items To Be Included In Record On Appeal**

<b>DOCKET # (Bankruptcy Court #06-10725)</b>	<b>DATE FILED</b>	<b>ITEM DESIGNATED</b>
1	04/13/2006	Chapter 11 Voluntary Petition filed by Debtors
8	04/14/2006	Motion for Order Under 11 U.S.C. Sections 105(a), 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget filed by Debtors
9	04/14/2006	Declaration of Thomas J. Allison in Support of Motion for Order Under 11 U.S.C. Sections 105(a), 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget filed by Debtors
32	04/19/2006	Interim Order Approving Motion Under 11 U.S.C. Sections 105(a), 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget entered by the Bankruptcy Court
34	04/19/2006	Motion to Extend Deadline to File Statements and Schedules or Provide Required Information filed by Debtors
53	04/25/2006	Opposition to Motion to Extend Deadline to File Schedules or Provide Required Information filed by Janet L. Chubb on behalf of Stanley Alexander Trust
103	05/01/2006	Opposition to Debtor's Proposed Cash Management Plan filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
117	05/02/2006	Errata to Opposition to Debtor's Proposed Cash Management Plan filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
173	05/08/2006	Motion to Temporarily Hold Funds Pending A Determination Of The Proper Recipients, and Memorandum of Points and Authorities filed by Debtors
208	05/11/2006	Motion for Relief from Stay Property filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
209	05/11/2006	Motion to Compel Debtor to Continue to Forward Lender Payment to Direct Lenders filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries (See Docket #215)
210	05/11/2006	Direct Lenders' Motion to Delay or Prohibit Appraisals on Performing Loans filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries (See Docket #215)

DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
215	05/11/2006	Motion to Compel Debtor to Continue to Forward Lender Payment to Direct Lenders; Motion to Delay or Prohibit Appraisals on Performing Loans filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
315	05/22/2006	Second Order Approving Debtors' Proposed Cash Management Procedures and Cash Usage filed by Debtors
316	05/22/2006	Order Approving Motion for Order Granting Additional Time to File its Statements and Schedules entered by the Bankruptcy Court
319	05/22/2006	Joinder to Motion to Compel Debtor to Continue to Forward Lender Payment to Direct Lenders; Motion to Delay or Prohibit Appraisals on Performing Loans filed by Robert C. LePome on behalf of Florence Alexander, et al.
374	05/26/2006	Opposition to Direct Lenders' Motion to Compel Debtor to Continue to Forward Lender Payments to Direct Lenders; and to Delay or Prohibit Appraisals on Performing Loans filed by Debtors
376	05/26/2006	Response regarding Debtors' Motion to Temporarily Hold Funds Pending a Determination of the Proper Recipients and Omnibus Objection to the Release Funds Motion filed by Shlomo S. Sherman on behalf of Official Committee of Equity Security Holders of USA Capital First Trust Deed
387	05/26/2006	Opposition to Direct Lenders' Motion for Relief from the Automatic Stay filed by Debtors
406	05/30/2006	Response to Individual Direct Lenders Request for Relief filed by Gregory E. Garman on behalf of Official Committee of Executory Contract Holders of Debtors
431	06/01/2006	Transcript of Hearing on May 3, 2006
445	06/02/2006	Joinder in Direct Lenders' Motions: (1) To Compel Debtor to Continue to Forward Lender Payments to Direct Lenders; and (2) To Delay or Prohibit Appraisals on Performing Loans filed by Lou O. Maldonado, Trustee for the benefit of the Maldonado Trust
509	06/06/2006	Errata to Direct Lenders' Motion for Relief from Automatic Stay - Section 362 Information Sheet filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
562	06/09/2006	Motion to Remove Fertitta Enterprises, Inc. As Member of Official Committee of Holders of Executory Contract Rights filed by Debtors

1	DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
2	566	06/09/2006	Omnibus Response to Motions for Relief from the Automatic Stay for Purposes of Terminating Loan Servicing Agreements filed by Rob Charles on behalf of Official Committee of Unsecured Creditors for Debtors
3	573	06/09/2006	Omnibus Response to Motions for Immediate Payment to Direct Lenders and Joinder in Debtors' Motion to Temporarily Hold Funds Pending a Determination of the Proper Recipients filed by Rob Charles on behalf of Official Committee of Unsecured Creditors for Debtors
4	592	06/09/2006	Motion for Authority to Forbear and to Provide Further Funding for Certain Outstanding Loans filed by Debtors
5	626	06/13/2006	Reply to Opposition to Motion to Compel Debtor to Continue to Forward Payments to Direct Lenders filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
6	627	06/13/2006	Reply to Opposition to Motion for Relief from the Automatic Stay filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
7	647	06/14/2006	Conditional Opposition of JV Direct Lenders to Debtors' Motion for Order Approving Continued Use of Cash through July 29, 2006 filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
8	734	06/19/2006	Joinder in Official Committee of Direct Lenders' Opposition to Debtors' Motion for Authority to Forbear and to Provide Further Funding for Certain Outstanding Loans filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
9	735	06/19/2006	Joinder in Official Committee of Direct Lenders' Opposition to Debtors' Motion to Remove Fertitta Enterprises, Inc. As a Member of the Committee filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
10	736	06/19/2006	Joinder in the U.S. Trustee's Opposition to Debtors' Motion to Remove a Member of the Executory Contract Rights Committee filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
11	737	06/19/2006	Joinder in the U.S. Trustee's Opposition to Debtors' Motion for Authority to Forbear and to Provide Further Funding for Certain Outstanding Loans filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
12	836	07/06/2006	Order Granting Debtors' Motion to Temporarily Hold Funds Pending A Determination of the Proper Recipients entered by the Bankruptcy Court
13	847	07/07/2006	Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds filed by Debtors

1	DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
2	892	07/19/2006	Order Preliminarily Denying Direct Lenders' Motion for Relief from the Automatic Stay entered by the Bankruptcy Court
3	986	07/27/2006	Partial Opposition of JV Direct Lenders to Debtors' Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
4	1133	08/10/2006	Joinder in Opposition to Motion for Relief from Stay [Relating to Docket 1122] filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
5	1134	08/10/2006	Joinder in Opposition to Motion for Relief from Stay [Relating to Docket 1111] filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
6	1184	08/24/2006	Order (A) Granting (i) Debtors' Motion to Distribute Funds; (ii) Debtors' Hold Funds Motion and (iii) the Compel Motion, and (B) Denying (i) the Lift Stay Motion and (ii) McKnight Motion entered by the Bankruptcy Court
7	1204	08/30/2006	Amended Statement of Jones Vargas Pursuant to Bankruptcy Rule 2019 filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
8	1275	09/13/2006	Second Amended Statement of Jones Vargas Pursuant to Bankruptcy Rule 2019 filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
9	1309	09/15/2006	Disclosure Statement filed by the Debtors
10	1310	09/15/2006	Chapter 11 Plan of Reorganization filed by the Debtors
11	1316	09/18/2006	Omnibus Response of JV Direct Lenders to First Interim Fee and Expense Applications filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
12	1352	09/22/2006	Motion for Order Scheduling An Auction for the Sale of Certain Assets, Appointing SPCP Group, LLC, as Lead Bidder, and Approving Bid Procedures filed by the Debtors
13	1512	10/12/2006	Opposition to Motion for Order Scheduling an Auction for the Sale of Certain Assets, Appointing South Point Group, LLC as Lead Bidder, and Approving Bid Procedures and Protections filed by James D. Greene on behalf of Capital Crossing Bank
14	1536	10/13/2006	Joinder in Capital Crossing Bank's Opposition to Motion for Order Scheduling an Auction for the Sale of Certain Assets, Appointing South Point Group, LLC as Lead Bidder, and Approving Bid Procedures and Protections filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries

1	DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
2	1576	10/18/2006	Amended Chapter 11 Plan filed by the Debtors
3	1603	10/19/2006	Notice of Filing of Asset Purchase Agreement filed by the Debtors
4	1706	10/30/2006	Notice of Filing of First Amended and Restated Asset Purchase Agreement filed by the Debtors
5	1741	11/06/2006	Amended Chapter 11 Plan (Second Amended) filed by the Debtors
6	1750	11/07/2006	Notice of Filing of Revised First Amended and Restated Asset Purchase Agreement filed by the Debtors
7	1761	11/08/2006	Order (A) Scheduling an Auction for the Sale of Certain Assets; (B) Appointing SPCP Group, LLC, as Lead Bidder, and (C) Approving Bid Procedures and Protections entered by the Bankruptcy Court
8	1798	11/15/2006	Debtors' First Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization filed by the Debtors
9	1799	11/15/2006	Amended Chapter 11 Plan (Third Amended) filed by the Debtors
10	1800	11/16/2006	Order Approving: (A) Debtors' Disclosure Statement; (B) Proposed Notice of Confirmation Hearing; (C) Proposed Solicitation and Notice Procedures; and (D) Proposed Form of Ballots entered by the Bankruptcy Court
11	1864	11/27/2006	Opposition to Motion for Approval of Procedures of the Four Official Committees to Approve Supplemental Disclosure filed by Alan R. Smith on behalf of Donna Cangelosi
12	1922	12/01/2006	Limited Opposition to Proposed Sale and Auction of Certain Assets filed by Alan R. Smith on behalf of Donna Cangelosi
13	1967	12/06/2006	Rule 2019 Statement of Law Offices of Alan R. Smith filed by Alan R. Smith on behalf of Donna Cangelosi
14	1977	12/07/2006	Notice of Revised Asset Purchase Agreement filed by the Debtors
15	2040	12/11/2006	Joinder in Donna Cangelosi's Objection to Confirmation of Debtors' Third Amended Joint Chapter 11 Plan of Reorganization as it Applies to Debtor filed by Janet L. Chubb on behalf of Direct Lenders-Beneficiaries
16	2042	12/11/2006	Objection to Confirmation of Plan filed by Alan R. Smith on behalf of the Lenders Protection Group
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DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
2099	12/14/2006	Amended Joinder to Objection to Confirmation of the Plan filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
2147	12/15/2006	Declaration of Thomas J. Allison in Support of the Confirmation of the Debtors' Third Amended Joint Plan of Reorganization filed by the Debtors
2148	12/16/2006	Reply Brief Supporting Confirmation of Debtor's Third Amended Joint Plan of Reorganization filed by the Debtors
2151	12/16/2006	Points and Authorities in Support of Confirmation of Debtors' Third Amended Joint Plan of Reorganization filed by the Debtors
2162	12/18/2006	Revised Schedule of Executory Contracts and Unexpired Leases in Connection with Debtors' Third Amended Joint Chapter 11 Plan of Reorganization filed by the Debtors
2163	12/18/2006	Errata to Declaration of Thomas J. Allison in Support of the Confirmation of the Debtors' Third Amended Joint Plan of Reorganization filed by the Debtors
2164	12/18/2006	Notice of Filing of Asset Purchase Agreement dated December 8, 2006 filed by the Debtors
2165	12/18/2006	Ballot Summary – Affidavit of Balloting Agent Regarding Solicitation and Tabulation of Votes in Connection with the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization filed by the Debtors
2179	12/18/2006	Joinder in Objection to Confirmation of Plan [Relating to Docket No. 1948] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
2180	12/18/2006	Joinder in Objection to Confirmation of Plan [Relating to Docket No. 1947] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
2181	12/18/2006	Partial Joinder in Opposition to Motion for Approval of Procedures Regarding Assignments of Direct Lenders' Interest in Loans [Relating to Docket No. 1993] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
2182	12/18/2006	Partial Joinder in Objection to Confirmation of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization [Relating to Docket No. 2035] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
2184	12/18/2006	Joinder in Opposition to Motion for Approval of Procedures [Relating to Docket No. 1957] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.

1	DOCKET # (Bankruptcy Court #06-10725)	DATE FILED	ITEM DESIGNATED
2	2188	12/18/2006	Amended Partial Joinder in Opposition to Motion for Approval of Procedures Regarding Assignments of Direct Lenders' Interest in Loans [Relating to Docket No. 1993 and in place of 2181] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
3	2191	12/18/2006	Amended Joinder in Opposition to Motion for Approval of Procedures [Relating to Docket No. 1957 and in place of 2184] filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
4	2194	12/18/2006	Declaration of Donna Cangelosi in Support of Objection to Confirmation of Plan [Relating to Docket No. 2042] filed by Alan R. Smith on behalf of Lenders Protection Group
5	2196	12/18/2006	First Amended Statement of the Law Offices of Alan R. Smith Pursuant to Bankruptcy Rule 2019 filed by Alan R. Smith on behalf of Lenders Protection Group
6	2257	12/22/2006	Notice of Intent to file Detailed Statement of Objections to, and Alternative Form of, Proposed Order confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization and Proposed Findings of Fact and Conclusions of Law filed by Alan R. Smith on behalf of Lenders Protection Group
7	2320	12/28/2006	Third Amended Statement of Jones Vargas Pursuant to Bankruptcy Rule 2019 filed by Janet L. Chubb on behalf of Baltes Company, Kehl, et al.
8	2342	01/02/2007	Notice of Filing of Transcript of Hearing on December 20, 2006 filed by the Debtors
9	2368	01/05/2007	Notice of Filing of Transcript of Hearing on December 19, 2006 filed by the Debtors
10	2376	01/08/2007	Order Confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization entered by the Bankruptcy Court
11	2377	01/08/2007	Findings of Fact and Conclusions of Law in Support of the Order Confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization entered by the Bankruptcy Court
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**EXHIBIT B****Statement Of Issues On Appeal**

- 1        1.        Did the Bankruptcy Court err by confirming the *Debtors' Third Amended Joint*  
2        *Chapter 11 Plan Of Reorganization* (the "Plan")?
- 3        2.        Did the Bankruptcy Court err by allowing Debtors to use their Plan to recover and  
4        retain property belonging to the Appellants?
- 5        3.        Did the Bankruptcy Court err by refusing to require the Debtors to commence an  
6        adversary proceeding under Fed. R. Bankr. Proc., Rule 7001 in order to recover and retain property  
7        belonging to the Appellants?
- 8        4.        Did the Bankruptcy Court err by ruling non-consenting Appellants are bound by an  
9        involuntary "compromise" provided for in the Debtors' Plan?
- 10       5.        Did the Bankruptcy Court err by allowing the Debtors to use recoupment to recover  
11       and retain property belonging to Appellants?
- 12       6.        Did the Bankruptcy Court err in allowing the Debtors to retain post-petition payments  
13       from borrowers delivered to Debtors in its capacity as the loan servicing agent paid on specific loans  
14       for the benefit of direct lenders in violation of NRS 645B.250?
- 15       7.        Did the Bankruptcy Court err by refusing to allow Appellants to enforce setoff rights?
- 16       8.        Did the Bankruptcy Court err by ruling the Debtors' Plan was feasible?
- 17       9.        Did the Bankruptcy Court err by ruling the Debtors' Plan properly classified claims  
18       without establishing a separate class for creditors with setoff rights?
- 19       10.       Did the Bankruptcy Court err by ruling the Plan of Debtor USA Commercial Mortgage  
20       Company satisfied 11 U.S.C. § 1129(a)(10)?
- 21       11.       Did the Bankruptcy Court err by ruling certain Loan Servicing Agreements between  
22       Debtor U.S.A. Commercial Mortgage Company and Appellants (the "Loan Servicing Agreements")  
23       were not executory contracts?
- 24       12.       Did the Bankruptcy Court err in approving the Sale to Compass Partners LLP?
- 25       13.       Did the Bankruptcy Court err by ruling the Debtors were not required to cure existing  
26       defaults under the Loan Servicing Agreements prior to transferring them to Compass Partners LLP?

1       14.     Did the Bankruptcy Court err by ruling the Debtors were not, with regard to existing  
2 defaults under the Loan Servicing Agreements, required to provide Appellants adequate assurances  
3 of future performance under those Agreements prior to assigning them to Compass Partners LLP?

4       15.     Did the Bankruptcy Court err in not requiring Compass Partners LLP to provide  
5 adequate assurance of future performance under the Loan Servicing Agreements?

6       16.     Did the Bankruptcy Court err in allowing the rights of lenders to be modified under  
7 the Loan Servicing Agreements in connection with the sale to Compass Partners LLP?

8       17.     Did the Bankruptcy Court err in holding that the sale of the Loan Servicing  
9 Agreements to Compass Partners LLP was free and clear of the rights of lenders to claim there was  
10 a default thereunder by reason of actions or inactions of the Debtor?

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